



PUBLIC NOTICE

Federal Communications Commission
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July 9, 2010

WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON REQUEST BY COLEMAN COUNTY BROADCASTING (CCB) FOR WAIVER OF THE REQUIREMENT TO TRANSITION TO THE NEW BRS/EBS BAND PLAN

Comment Date: July 26, 2010

Reply Date: August 5, 2010

On June 30, 2010, Coleman County Broadcasting (CCB), a provider of multichannel video service over leased Educational Broadband Service (EBS) spectrum in the Santa Anna, Texas area, filed on behalf of all the EBS licensees from which CCB leases excess capacity, a request for permanent waiver of the requirement that all Broadband Radio Service (BRS) and EBS licensees transition to the new BRS/EBS band plan adopted in the Commission's *Report and Order* in WT Docket No. 03-66.¹ This band plan is set forth in Section 27.5(i)(2) of the Commission's Rules.²

In the *BRS/EBS R&O* and *FNPRM*, the Commission adopted a new band plan in an effort to modernize and enhance our rules and policies governing the licensing of the Educational Broadband Service (EBS) and the Broadband Radio Service (BRS) in the 2495-2690 MHz band.³ Indeed, a critical element of the *BRS/EBS R&O* and *FNPRM* is the adoption of a market-oriented, transition mechanism that enables incumbent licensees to develop regional plans for moving to new spectrum assignments in the restructured band plan. The Commission, nevertheless, found that it is in the public interest to consider case-by-case waivers of the transition rules for a class of operators or their affiliates that: (1) meet the definition of a Multichannel Video Programming Distributor (MVPD) as defined in Section 522 of the Communications Act of 1934, as amended; and (2) provide MVPD service to five percent or more of the households within their respective Geographic Service Areas (GSAs), as calculated in accordance with the requirements of Section 76.905(c) of the Commission's rules.⁴ The Commission further found

¹ See Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, *Report and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 03-66, 19 FCC Rcd 14165 (2004) (*BRS/EBS R&O* and *FNPRM*), affirmed in pertinent part by *Order on Reconsideration and Fifth Memorandum Opinion and Order and Third Memorandum Opinion and Order and Second Report and Order*, 21 FCC Rcd 5606 (2006). The deadline for filing opt-out waiver requests was within 60 days after a proponent filed an initiation plan, or April 30, 2007, whichever came first. 47 C.F.R. § 27.1231(g). On June 4, 2010, the Commission granted CCB an extension until July 6, 2010 to file a request for waiver to opt out of the new band plan. See Central Texas Communications, Inc. and Coleman County Broadcasting, Inc., *Memorandum Opinion and Order*, FCC 10-105 (Jun. 4, 2010). CCB's request is timely pursuant to the extension granted by the Commission.

² 47 C.F.R. § 27.5(i)(2).

³ *BRS/EBS R&O* and *FNPRM*.

⁴ 47 CFR § 76.905(c). The original proposal to permit MVPDs to opt-out of the transition was presented to the Commission by the Wireless Communications Association, International, the Catholic Television Network, and the

that it is in the public interest to consider waivers for any BRS or EBS licensee that is collocated with any qualified MVPD licensee that seeks a waiver to opt-out.⁵ The Commission further found that it is in the public interest to consider waivers from MVPDs or BRS licensees that have a viable business for high-powered operations, but who need more than seven digitized high-powered MBS channels to deliver their service to their customers. The Commission stated that in reviewing requests to waive the rules, the Commission would consider the actions taken by MVPDs or BRS licensees to minimize the effect of interference on neighboring markets, as well as the licensee's explanation as to why it cannot work within the transition rules. The Commission stated that waivers will be granted if it is shown that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) in view of the unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.⁶

On June 30, 2010, CCB filed a request for waiver to allow it to opt-out of transitioning to the new band plan. CCB requests waiver of Sections 27.1230 *et. seq.* of the Commission's Rules,⁷ and also requests that the Commission issue certain clarifications. Specifically, CCB requests that a grant of its requested waiver specifically state that:

Section 27.1230 of the rules should be waived to the extent it requires CCB and its EBS licensees to transition from the frequencies specified in Section 27.5(i)(1) to the frequencies specified in Section 27.5(i)(2).

Section 27.1220 of the rules should be waived to the extent it limits EBS channels to a bandwidth of 5.5 MHz.

The height benchmarking obligations and related requirements of Section 27.1221 should be waived (since CCB and CTC have transmitters located within each other's 35-mile GSA, the required height benchmarking is not technically feasible).

Section 27.1222 should be waived to the extent it requires guardbands in the 2568-2572 and 2614-2618 MHz bands and makes transmissions in those bands secondary to adjacent channel transmissions.

Section 27.55(a)(4)(i) should be waived to the extent necessary to allow CCB and its EBS lessors to continue their current operations within the Santa Anna Geographic Service Areas.

Pursuant to Section 27.1209 of the rules, CCB and the EBS licensees should be specifically authorized to operate on the pre-transition band plan set forth in Section 27.5(i)(1).

National ITFS Association in October 2002. *See generally* A Proposal for Revising the MDS and ITFS Regulatory Regime, RM-10586 (filed Oct. 7, 2002). As adopted, the *BRS/EBS R&O* and *FNPRM* significantly altered that proposal.

⁵ *BRS/EBS R&O*, 19 FCC Rcd 14165, 14199 ¶ 77.

⁶ 47 C.F.R. § 1.925(b)(3).

⁷ 47 C.F.R. §§ 27.1230 *et. seq.*

CCB and the EBS licensees should be authorized to continue operating at their current EIRP power levels pursuant to Section 27.50(h)(i) and (ii) of the rules.

All channels in CCB's system should be permitted to continue operating under the "pre-transition" emission limits for analog video programming channels set forth in Section 27.53(m)(1) of the rules.⁸

CCB and its EBS lessors will participate in good faith in any transition process relating to any geographic area that overlaps their GSA. In conjunction with any such transition, CCB and its EBS lessors will subsequently make such modifications to their facilities at the proponent's expense as the proponent may reasonably request in an effort to reduce interference to licensees in other markets that are transitioning, provided that such modifications can be accomplished without cumulatively resulting in more than a *de minimis* reduction in CCB's ability to serve its then-existing customers.

CCB and the EBS licensees should be authorized to continue operating pursuant to Section 27.55(a)(4)(i) of the rules limiting the signal strength along the GSA boundary to the greater of their current EIRP power levels (as described in Exhibit 1 of the request) or 47 dBuV/m.

Interested parties may file comments on the waiver request on or before **July 26, 2010**. Parties interested in submitting reply comments must do so on or before **August 5, 2010**.

All comments should reference the subject waiver request including the DA number of this Public Notice, and should be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street SW, TW-A325, Washington DC 20554. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail).

- Effective December 28, 2009, all hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. The filing hours at this location are 8:00 a.m. to 7:00 p.m.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

Parties shall also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, (202) 488-5300, or via e-mail to fcc@bcpiweb.com. Documents relating to this waiver request will be available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th St. S.W., Room CY-A257, Washington, DC 20554. The documents may also be purchased from BCPI, telephone (202) 488-5300, facsimile (202) 488-5563, TTY (202) 488-5562, e-mail

⁸ While CCB cites Section 27.53(l)(1) of the Commission's Rules, the applicable rule is 47 C.F.R. § 27.53(m)(1).

fcc@bcpiweb.com. For further information regarding the public reference file for this waiver request, contact the Reference Information Center at (202) 418-0270.

Unless otherwise provided, requests for waiver of the Commission's Rules are subject to treatment by the Commission as restricted proceedings for *ex parte* purposes under Section 1.1208 of the Commission's Rules, 47 C.F.R. § 1.1208. Because of the policy implications and potential impact of this proceeding on persons not parties to the waiver request, we believe it would be in the public interest to treat this case as a permit-but-disclose proceeding under the *ex parte* rules. See Sections 1.1200(a), 1.1206 of the Commission's Rules, 47 C.F.R. §§ 1.1200(a), 1.1206. Therefore, subsequent to the release of this Public Notice, *ex parte* presentations that are made with respect to the issues involved in the subject waiver request will be allowed but must be disclosed in accordance with the requirements of Section 1.1206(b) of the Commission's Rules, 47 C.F.R. § 1.1206(b).

For further information, contact Nancy M. Zaczek, Broadband Division, Wireless Telecommunications Bureau at (202) 418-0274, or by e-mail at Nancy.Zaczek@fcc.gov.

By the Chief, Broadband Division, Wireless Telecommunications Bureau.

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